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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Drewe *et al.*

Appl. No. 09/836,548

Filed: April 18, 2001

For: **Substituted 1,4-Thiazepine and
Analogues as Activators of Caspases
and Inducers of Apoptosis and the
Use Thereof**

Confirmation No. 6789

Art Unit: 1624

Examiner: Coleman, B.

Atty. Docket: 1735.0450001/RWE/RAS

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Resubmission of Information Disclosure Statement

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Listed on accompanying Form PTO-1449 are documents that may be considered material to the examination of this application, in compliance with the duty of disclosure requirements of 37 C.F.R. §§ 1.56, 1.97 and 1.98. Enclosed please find copies of the missing references, along with the PTO-1449 forms submitted in the Information Disclosure Statement filed November 4, 2002. Also please find the stamped postcard stating that 60 documents were filed.

Where the publication date of a listed document does not provide a month of publication, the year of publication of the listed document is sufficiently earlier than the effective U.S. filing date and any foreign priority date so that the month of publication is not in issue. Applicants have listed publication dates on the attached PTO-1449 based on information presently available to the undersigned. However, the listed publication dates should not be construed as an admission that the information was actually published on the date indicated.

In accordance with 37 C.F.R. § 1.98(a)(3), Applicants' undersigned representative submits the following discussion of the relevance of the non-English language documents AM1, AR3 and AR17 cited on Form PTO 1449:

Document **AM1**, patent WO 98/56785 is in the Japanese language. The relevance of this document may be ascertained by reference to the International Search Report (document **AT17**) for the corresponding International Application No. PCT/US01/12581. See the sheet numbered page 1.

Document **AR3**, Curtze, J. and Thomas, K., *Liebigs Ann. Chem.* 328-333 (1974), is in a foreign language. This document discloses the reactions of heterocycles such as benzothiazepines, benzodiazepines and quinoxalines to give benzopyrano derivatives and chromones. An English language abstract of document AR3 is attached as document **AT18**.

Document **AR17**, Zhelyazkov, L. and Bizhev, A., *God. Vissk. Khim. -Tekhnol. Inst.* 20:251-258 (1974), is in a foreign language. This document discloses cyclocondensation reactions used to provide diazepines. An English language abstract of document AR17 is attached as document **AS18**.

Applicants wish to bring the following information to the Examiner's attention. The invention claimed in provisional Application No. 60/197,599, filed April 18, 2000 (cited herewith as document **AS19**), to which the present application claims priority, was invented by John A. Drewe and Sui Xiong Cai, who had an obligation of assignment to Cytovia, Inc. Many of the compounds disclosed in the provisional application (see Table I on page 32) were previously purchased as part of a chemical compound library disclosed in WO 00/07017. At a later time, the invention defined by claims 1-93 of the present application was co-invented by Emma Jane Shelton, Joane Litvak, David Sperandio, Jeffrey R. Spencer and Martin Sendzik. These five inventors had an obligation to assign their rights to Axyx Pharmaceuticals, Inc. Method claims 57-93 were also co-invented by John A. Drewe and Sui Xiong Cai, who had an obligation of assignment to Cytovia, Inc.

Applicants wish to bring the following information to the Examiner's attention. The priority filing date of provisional application No. 60/197,599 is April 18, 2000, which would require the month of publication to be provided for all references published starting in 1999. However, for Document **AS1** the month of publication could not be determined.

Applicants reserve the right to establish the patentability of the claimed invention over any of the information provided herewith, and/or to prove that this information may not be prior art, and/or to prove that this information may not be enabling for the teachings purportedly offered.

This statement should not be construed as a representation that a search has been made, or that information more material to the examination of the present patent application does not exist. The Examiner is specifically requested not to rely solely on the material submitted herewith. It is further understood that the Examiner will consider information that had been cited or submitted to the U.S. Patent and Trademark Office in a prior application relied on under 35 U.S.C. § 120. 1138 OG 37, 38 (May 19, 1992).

It is respectfully requested that the Examiner initial and return a copy of the enclosed PTO-1449, and to indicate in the official file wrapper of this patent application that the documents have been considered.

This Information Disclosure Statement is being filed more than three months after the filing date, but before the mailing date of a first Office Action on the merits. No statement or fee is required.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.


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Date: July 24, 2003

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